

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF WASHINGTON

3

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7 RONALD JAMES DAVENPORT, et al.,

8 Defendants.

9 No. CV-08-158-FVS

10 ORDER DENYING MOTION TO
11 VACATE AND GRANTING
12 MOTION TO AMEND

13 **ACTION BY CLERK REQUIRED**

14 **THIS MATTER** comes before the Court without oral argument based
15 upon Ronald J. Davenport's motion to vacate the judgment and the
16 United States' motion to amend it. The United States is represented
17 by Michael P. Hatzimichalis. Mr. Davenport is representing himself.

18 **BACKGROUND**

19 On May 19, 2008, the United States filed a "Complaint to Reduce
20 Federal Tax Assessments to Judgment and to Foreclose Federal Tax Liens
21 on Real Property" (ECF No. 1). The title of the complaint succinctly
22 sums up the genesis of the action: the defendants' alleged failure to
23 pay federal income taxes. On May 7, 2010, the Court granted two
24 motions. One was the United States' motion for entry of a default
25 judgment against Ronald J. Davenport as a sanction for his failure to
26 provide discovery. The other motion was the United States' motion for
summary judgment against Mr. Davenport's former wife and a putative

corporation named "Wind Ivy Ministries." (ECF No. 145.) The Clerk of the Court entered a one-page, written judgment the same day. (ECF No. 146.) The judgment orders Mr. Davenport to pay the United States the sum of \$298,700.31 in unpaid tax liabilities and penalties. The judgment also orders him to pay the United States the sum of \$1,393.09 in attorneys fees and costs. *Id.* On May 14, 2010, Mr. Davenport filed a motion to vacate the judgment. (ECF No. 152.) He sought relief under Federal Rules of Civil Procedure 12(h) (3), 60(b) (3), and 60(b) (4). *Id.* at 1. Among other things, he argued the Court lacks jurisdiction over the subject matter of the action. *Id.* at 8-15. The Court denied Mr. Davenport's motion to vacate. (ECF No. 162.) He appealed and, while his appeal was pending, the United States took steps to execute the judgment. As it turned out, Mr. Davenport's principal asset was a parcel of real property that he and his former wife owned. The property was sold at an auction for \$172,100. One half of the net proceeds were distributed to Mr. Davenport's former wife. The other half of the net proceeds were applied to Mr. Davenport's debt to the United States. On July 5, 2012, the Ninth Circuit issued a short memorandum opinion affirming the judgment. During the spring of 2013, Mr. Davenport lodged a second motion with the Clerk attacking the judgment under Rule 60(b) (4). (ECF No. 188.) The United States filed a response to his motion on July 3, 2010, and, on July 10, 2013, the United States filed a motion of its own asking the Court to amend the judgment. The United States says it erroneously requested the payment of certain penalties Mr. Davenport

1 does not owe.

2 **RULING**

3 Mr. Davenport alleges the judgment that was entered on May 7,
4 2010, is void because the Court lacked jurisdiction over the subject
5 matter of the action. He urges the Court to vacate the judgment
6 pursuant to Rule 60(b)(4). See, e.g., *United States v. Berke*, 170
7 F.3d 882, 883 (9th Cir.1999) ("A final judgment is 'void' for purposes
8 of Rule 60(b)(4) only if the court that considered it lacked
9 jurisdiction, either as to the subject matter of the dispute or over
10 the parties to be bound, or acted in a manner inconsistent with due
11 process of law."). In assessing the merits of Mr. Davenport's Rule
12 60(b)(4) motion, it is necessary to begin with the relief requested in
13 the complaint. The United States sought to reduce federal tax
14 assessments to judgment and to foreclose federal tax liens on real
15 property. This type of action is a creature of statute, and, as such,
16 is subject to limitations that have been imposed by Congress. For
17 example, "[n]o civil action for the collection or recovery of taxes,
18 or of any fine, penalty, or forfeiture, shall be commenced unless the
19 Secretary [of the Treasury] authorizes or sanctions the proceedings
20 and the Attorney General or his delegate directs that the action be
21 commenced." 26 U.S.C. § 7401. The United States acknowledged the
22 preceding, statutory requirement in its complaint. Paragraph 2
23 alleged, "This action is brought at the direction of the Attorney
24 General of the United States and at the request and with the
25 authorization of the Chief Counsel of the Internal Revenue Service
26

1 ("IRS"), a delegate of the Secretary of the Treasury, pursuant to 26
2 U.S.C. §§ 7401 and 7403." There is no reason to doubt the accuracy of
3 paragraph 2. Thus, the United States was authorized by Congress to
4 bring the action it commenced on May 19, 2008. The fact the action
5 was authorized by Congress means the Court had "original
6 jurisdiction." 28 U.S.C. § 1345 ("the district courts shall have
7 original jurisdiction of all civil actions, suits or proceedings
8 commenced by the United States, or by any agency or officer thereof
9 expressly authorized to sue by Act of Congress").

10 Mr. Davenport questions the preceding conclusion. While he
11 acknowledges "the United States" has authority, pursuant to § 1345, to
12 commence an action in a district court and the district court has
13 "original jurisdiction" over the action, he is troubled by the fact
14 that, in the instant action, the title of the complaint lists the
15 "UNITED STATES OF AMERICA" as the plaintiff. Based upon the research
16 he has done, Mr. Davenport believes the term "UNITED STATES OF
17 AMERICA" is a term of art. In his opinion, it refers to the 50 states
18 of the Union in their aggregate. He does not think the 50 states in
19 their aggregate, *viz.*, the "UNITED STATES OF AMERICA," have the power
20 to bring an action against him; only "the United States" has that
21 power, and, according to him, that entity is not the plaintiff in this
22 action. Thus, as Mr. Davenport views the complaint, he has not been
23 sued by "the United States" and, so, this Court lacks original
24 jurisdiction over the action.

26 Mr. Davenport's interpretation of the title of the complaint is

unpersuasive. Federal Rule of Civil Procedure 10(a) states, "Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties" Typically, each party's name is typed in capital letters in the title. This convention has no legal significance. *See, e.g., Adams v. City of Marshall*, No. 4:05-CV-62, 2005 WL 2739029 (W.D.Mich. Oct. 24, 2005) (quoting *United States v. Heijnen*, 375 F.Supp.2d 1229, 1231 (D.N.M., 2005)). Thus, the fact the complaint lists the plaintiff in the instant action as the "UNITED STATES OF AMERICA" rather than, say, the "United States of America" or, even, the "United States" does not alter the identity of the plaintiff. Indeed, were there any real question as to the identity of the plaintiff in the instant action, it could quickly be answered by a review of the body of the complaint. For example, Paragraph 1 states in part, "This is a civil action brought by the United States of America to reduce federal income tax assessments against Ronald James Davenport . . . to judgment" Looking at the complaint in its entirety, there can be no doubt Mr. Davenport was sued by the United States pursuant to authority conferred by Congress. That being so, the Court had jurisdiction over the subject matter of the action. The judgment is not void for want of subject matter jurisdiction.

However, in fairness to Mr. Davenport, the judgment does need to be amended. As explained above, the judgment orders him to pay the United States the sum of \$298,700.31 in unpaid tax liabilities and penalties, and it orders him to pay the United States the sum of

\$1,393.09 in attorneys fees and costs. The figure \$298,700.31 is the sum of both unpaid tax liabilities (\$270,410.66) and frivolous return penalty assessments (\$28,289.65). The United States has discovered that the total frivolous return penalty assessments should have been \$3,599.47, not \$28,289.65. The United States acknowledges its error and urges the Court to amend the judgment accordingly. The Court will do so. The first sentence of the first full paragraph of the judgment will be amended to state, "Mr. Davenport is indebted to the United States in the amount of \$275,404.22 as of March 9, 2010."

IT IS HEREBY ORDERED:

1. The "Motion for Relief from Judgment per FRCP 60(b)(4)" (ECF No. 188) is denied.

2. The "United States' Motion to Amend Judgment" (ECF No. 191) is granted. The Clerk of the Court shall prepare and file an amended judgment. The first sentence of the first full paragraph of the judgment shall be amended to state, "Mr. Davenport is indebted to the United States in the amount of \$275,404.22 as of March 9, 2010."

IT IS SO ORDERED. The Clerk of the Court is hereby directed to enter this order and furnish copies of this order and the amended judgment to Mr. Davenport and to counsel for the United States.

DATED this 29th day of July, 2013.

s/Fred Van Sickle
Fred Van Sickle
Senior United States District Judge